



# **THE ATTORNEY GENERAL OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

**December 16, 1957**

Honorable Homer Garrison  
Director, Texas Department of  
Public Safety  
Austin, Texas

**Opinion No. WW- 325**

**Re: Whether the County Attorney,  
District Attorney or Crim-  
inal District Attorney,  
respectively, has a duty to  
represent the State in ap-  
peals and other actions in  
the local courts resulting  
from acts and orders of the  
Department of Public Safety,  
pursuant to the Safety-  
Responsibility Act (Art.6701h,  
V.C.S.) and related questions.**

**Dear Mr. Garrison:**

We have received your letter of November 18, 1957, submitting several questions for the opinion of our department. These questions amount to but one proposition, that is, is there a duty upon the district attorney, county attorney, or criminal district attorney, as the case may be, to represent the Department of Public Safety and, consequently, the State of Texas in appeals and other actions resulting from acts and orders from the Department of Public Safety pursuant to the Safety-Responsibility Act (Article 6701h, V.C.S.).

The statutes of the State of Texas are very confusing concerning the powers, rights, and duties of county attorneys, district attorneys and criminal district attorneys. However, the Constitution of the State of Texas, in Section 21 of Article V, imposes upon county attorneys the following duty:

"The county attorneys shall represent the state in all cases in district and inferior courts in their respective counties, but if any county shall be included in a district in which there shall be a district attorney the respective duties of district attorneys and county attorneys shall in such counties be

regulated by the Legislature."

Accordingly, in any county in which there is a county attorney, the duty evolves upon such county attorney to represent the Department of Public Safety, which is but an agency of the State of Texas in the district and inferior courts in appeals and actions arising from the operation of the Safety-Responsibility Act.

We have been unable to find any general duties placed upon the district attorneys of the State to represent the State in civil actions in the district or inferior courts of the counties or districts which they represent. The duty, powers and responsibilities of the district attorneys depend upon the statutes which create their positions, and in each particular instance the statute creating the office of the district attorney must be referred to, to determine if such district attorney has the duty to represent the Department of Public Safety in the appeals and actions above referred to.

Criminal district attorneys exist in the State of Texas in lieu of the district and county attorneys in the county in which they have been established. Neal v. Sheppard, 209 S. W. 2d 388 (Tex. Civ. App. 1948); Art. V Sec. 21, Tex. Const. They succeed to the powers of both the district and county attorneys in such counties and, accordingly, under the power generally given to the county attorney by the provisions of Section 21 of Article V of the Texas Constitution, would have the duty to represent the State in all cases in the district and inferior courts in their respective counties.

Our holding may be summarized as follows: Any county attorney has the duty to represent the State in appeals and actions resulting from the operations of the Safety-Responsibility Act, since the Department of Public Safety is the agency affected and is an agency of the State of Texas. Criminal district attorneys, because of their succession to the powers of the county attorneys in the counties in which they are created, have the same duties as county attorneys with respect to actions arising from the Safety-Responsibility Act. District attorneys have duties with respect to the civil actions arising from the operation of the Safety-Responsibility Act in accordance with the individual statutes creating their position, there being no general statute concerning or governing their duties in the realm of representation of the State.

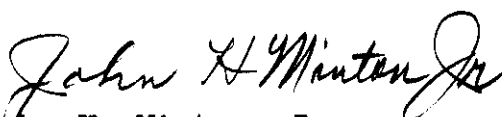
Honorable Homer Garrison, page 3. (WW-325)

S U M M A R Y

County attorneys and criminal district attorneys shall represent the State (Department of Public Safety) in local courts in appeals and actions resulting from acts and orders of the Department of Public Safety pursuant to the Safety-Responsibility Act (Article 6701h, V.C.S.). The duties of district attorneys in this respect depend upon the specific legislative act creating their position.

Very truly yours,

WILL WILSON  
Attorney General of Texas

By   
John H. Minton, Jr.  
Assistant

JHM:zt

APPROVED:

OPINION COMMITTEE

Geo. P. Blackburn, Chairman  
Mrs. Marietta McGregor Payne  
B. H. Timmins, Jr.  
Fred Werkenthin

REVIEWED FOR THE ATTORNEY GENERAL  
BY: James N. Ludlum